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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/009,294

06/06/2002

Keith Patrick Heaton

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11/01/2006

EXAMINER

LEWIS, KIM M

LEGAL DEPARTMENT INTELLECTUAL PROPERTY

KINETIC CONCEPTS, INC.

P.O. BOX 659508

SAN ANTONIO, TX 78265-9508

ART UNIT

PAPER NUMBER

3772

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/009,294		HEATON ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Kim M. Lewis		3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-23 is/are pending in the application.
- 4a) Of the above claim(s) 10-21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 and 23 is/are allowed.
- 6) ☒ Claim(s) 2-4, 6, 8, 9 is/are rejected.
- 7) ☒ Claim(s) 5 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)              |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application    |
| Paper No(s)/Mail Date <u>2/24/06</u>   | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/22/06 has been entered.

As requested in the submission, claims 2 and 3 have been amended, and claims 8-23 have been added.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 2/24/06 has been received and made of record. Note the acknowledged form PTO-1449 enclosed herewith.

### ***Election/Restrictions***

3. Newly submitted claims 11-23 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different

process of using that product. See MPEP § 806.05(h). In the instant case, the product as claimed can be used in a materially different process of using that product, for example, in a process to keep a wound dry during a shower.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 11-23 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 2-4, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,865,772 ("George") in view of U.S. Patent No. 6,051,747 ("Lindqvist et al.").

As regards claim 2, George discloses an apparatus capable of stimulating healing of wounds, which comprises an envelope (10) for receiving an affected part of the body, said envelope including a substantially air-tight, air-impermeable cover (abstract, col. 3, lines 1-5 and col. 7, lines 5-7), a dressing, bandage or cast within the cover, and connecting means (pump 12 including associated parts) for connecting the interior of the envelope to a source of negative pressure.

George fails to teach that the dressing comprises a porous pad. However, Lindqvist et al. disclose a conventional dressing in the bandage/dressing art comprising a porous pad. Thus, it would have been an obvious to one having ordinary skill in the art at the time the invention was made to substitute the dressing of George for the dressing of Lindqvist et al. since it appears that the invention of George would perform equally well with any type of dressing.

As regards claim 3, George discloses that the device is capable for use on the hand (col. 7, lines 33-36) George fails to teach that the device has an additional external cover of air-impermeable material. However, the examiner contends that it would have been obvious to provide an additional layer of the same material, thereby providing an external air-impermeable cover in order to strengthen the device. Duplicating the layer of the device to strengthen the device requires only routine skill.

As regards claim 4, the pump, which comprises a tube at its inlet and outlet, inherently communicates with the dressing (pad) since it communicates with the interior of the device.

As regards claim 6, the pump is a vacuum pump otherwise termed a suction pump.

As regards claim 9, note the rejection of claim 2 above.

8. Claims 2, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,768,501 ("the '501 patent").

As regards claim 2, the '501 patent discloses an apparatus capable of stimulating healing of wounds, which comprises an envelope (flexible membrane 12) for receiving an affected part of the body, the envelope including a substantially air-tight, air-impermeable cover (abstract, col. 2, lines 48-51), a dressing or cast within the cover, and connecting means (tubing 22) for connecting the interior of the envelope to a source of negative pressure (vacuum source 24).

The '501 patent fails to teach that the dressing comprises a porous pad. However, Lindqvist et al. disclose a conventional dressing in the bandage/dressing art comprising a porous pad. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the dressing of the '501 patent for the dressing of Lindqvist et al. since it appears that the invention of the '501 patent would perform equally well with any type of dressing.

Regarding claim 6, the negative pressure source is a vacuum (suction) pump.

Regarding claim 8, as can be seen in Fig. 3, the vacuum source is located outside the cover.

#### ***Allowable Subject Matter***

9. Claims 5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. Claims 22 and 23 are allowed.

#### ***Response to Arguments***

In response to applicant's arguments regarding the combination of George and Lindqvist et al., the examiner disagrees. First, applicant asserts that George is intended for use with traditional dressings. The examiner disagrees. Nowhere in the George patent does it recite for use with traditional casts or dressings. Applicant's attention is directed to col. 2, line 15-17, where it is clearly written "...for medical casts, bandages or

dressings.” Thus, the device of George is for use with **medical** casts, bandages or dressings. And, since the dressing of Lindqvist et al. is a medical dressing, it is capable of use with the device of George. Furthermore, one would have looked to the device of George for covering a dressing such as the one disclosed in Lindqvist et al. in order to keep the wound on which the dressing is placed, away from dirty, soapy water.

In response to the argument that the George patent, if modified with the teachings of Lindqvist, would render the patent unsatisfactory for its intended purpose, the examiner disagrees. The examiner concedes that the dressing of Lindqvist et al. is for absorbing wound exudate. However, one using the dressing of Lindqvist et al. would still want to protect the dressing from water from the shower so as to keep contaminants associated with a bath (e.g., dirty, soapy water) away from the dressing.

Applicant should also note that during the use of the device of George with the dressing of Lindqvist et al., the wound exudate in the dressing is not necessarily squeezed out of the dressing, as it would take sufficient pressure and a significant amount of wound exudate in the dressing in order that exudate be released upon use of the device of George. Applicant should note that the device of George is elastic and if the dressing of Lindqvist et al. was compressed during placement and removal of air from the cover, it could easily expand to absorb wound exudate.

As to the applicant’s comment regarding the dressing of Lindqvist et al. being used with wounds that require frequent and long-term monitoring, the examiner contends that a brief shower or bath does not deter frequent monitoring of the wound




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since the wound would not usually be monitored by a physician/nurse during a bath or shower.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Mon.- Fri., from 7:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Kim M. Lewis  
Primary Examiner  
Art Unit 3772

kml  
October 23, 2006